International Computaprint Corp. *and* Teamsters Union Local 929, International Brotherhood of Teamsters. Case 4–CA–10157

May 28, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On June 6, 1980, Administrative Law Judge Joel A. Harmatz issued the attached Decision in this proceeding. Thereafter, the General Counsel and Respondent filed exceptions and supporting briefs, and the General Counsel filed a brief in support of portions of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[3]

Contrary to our dissenting colleague, we adopt the Administrative Law Judge's conclusion that the General Counsel has not established by a preponderance of the evidence that Respondent additionally violated Section 8(a)(3) and (1) of the Act by selecting employees Shaw, Caetano, Murray, and Eagles for layoff. In so doing, we point out that it is undisputed that Respondent's decision to effect a layoff was based on legitimate business considerations. Furthermore, it is clear that, as found by the Administrative Law Judge, Respondent's decision to prefer second-shift personnel for layoff was consistent with its prior layoff and that such preference was also based on valid business considerations since, *inter alia*, the second shift was less productive than the first shift in terms of unit costs. Additionally, we emphasize, as did the Administrative Law Judge, that several employees who were laid off were not named in the complaint and several others who were retained engaged in union activity identical to that of the alleged discriminatees.

Furthermore, contrary to our colleague, we agree with the Administrative Law Judge's findings that the General Counsel has not demonstrated that Respondent's asserted reasons for selecting the remaining four alleged discriminatees for layoff were invalid. Thus, as found by the Administrative Law Judge, Respondent's assertion that Shaw was selected because of her excessive absenteeism is supported by the fact that, so far as this record shows, she may have had the worse attendance in the entire division. Additionally, with respect to Caetano's selection for layoff, it is clear that both she and employee Latta, whom Respondent retained rather than Caetano, had engaged in the same union activity. Further, contrary to our colleague, the facts that Caetano was on a 30-day warning period at the time of her layoff and that, immediately prior to the layoff, she had clearly violated her earlier warning serve as a rational and legitimate basis for selecting her for layoff, as argued by Respondent and as found by the Administrative Law Judge.

With respect to Murray, the Administrative Law Judge noted that she was the only second-shift employee in her department, that she had been assigned to that shift at her own request because she could only work those hours due to personal problems, and that her work was readily absorbed by the first shift. Accordingly, and based on his finding that Respondent's preference in selecting second-shift employees for layoff was legitimate, the Administrative Law Judge concluded that the General Counsel had not shown that Respondent's retention of first-shift employee Canfield over Murray was discriminatorily motivated. Our dissenting colleague does not seriously dispute the above factual findings. Rather, he contends primarily that the Administrative Law Judge erred in discrediting Murray's testimony that Canfield had indicated that she would volunteer for layoff. However, in making his credibility resolutions the Administrative Law Judge noted generally that the

[1] The General Counsel and Respondent have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In concluding that Respondent did not violate Sec. 8(a)(3) and (1) of the Act in selecting four of the five alleged discriminatees for layoff, the Administrative Law Judge relied, in part, on the absence of animus by Respondent. Contrary to the Administrative Law Judge, however, his finding that Respondent violated Sec. 8(a)(3) and (1) with respect to employee Leight establishes Respondent's animus. Nevertheless, we conclude that the General Counsel has not demonstrated by a preponderance of all the evidence that Respondent committed the additional violations alleged.

In dismissing the complaint allegations as to employee Shaw, the Administrative Law Judge stated that he was unwilling to infer Respondent's knowledge of her union activities in view of, *inter alia*, the size of the employee complement. We find it unnecessary to pass on whether the small-plant doctrine is applicable to the activities of Shaw or Eagles, the only two of the remaining alleged discriminatees who admittedly engaged in soliciting on Respondent's premises, since even assuming, *arguendo*, that Respondent had knowledge of such activities, we would find the record insufficient to establish that their layoffs were unlawfully motivated.

[3] We find that it will effectuate the purposes of the Act to require Respondent to expunge from employee Leight's personnel records, or other files, any reference to his unlawful layoff. We shall modify the Administrative Law Judge's recommended Order accordingly.

General Counsel's witnesses impressed him as untrustworthy. The record further supports his specific finding that Murray's testimony in various respects was not forthright and was confused and hedged. Nor can we conclude that the inherent probabilities here require a reversal of the Administrative Law Judge's credibility resolutions.

Finally, the Administrative Law Judge credited the testimony of Respondent's supervisors, as supported by employee Ragg, and concluded that Eagles had volunteered for layoff. Our dissenting colleague, as in Murray's case, relies primarily on his own view of the credibility of witnesses but offers no adequate basis for reversing the Administrative Law Judge's resolutions. Additionally, our colleague relies heavily on the fact that Respondent, although asserting that Eagles volunteered for layoff, had prepared a termination slip for him. That fact, however, is not compelling since Respondent also prepared a termination slip prior to the layoff for employee Jackson, who was retained over Eagles. Such evidence may demonstrate that Respondent acted arbitrarily; it does not establish that it acted discriminatorily.

In sum, while we recognize, as did the Administrative Law Judge, that there are some suspicions raised here, mere suspicion cannot serve as a substitute for proof of a violation.[4] Rather, the General Counsel has the burden of establishing unfair labor practices by a preponderance of all the relevant evidence. In view of the foregoing, and the record as a whole, we agree that the General Counsel has not met his burden with respect to the four additional alleged discriminatees.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, International Computaprint Corp., Fort Washington, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order as so modified:

1. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly:

"(b) Expunge from Bryant Leight's personnel records, or other files, any reference to his April 25, 1979, layoff, and notify him in writing that this has been done, and that evidence of this unlawful layoff shall not be used as a basis for future discipline against him."

2. Substitute the attached notice for that of the Administrative Law Judge.[5]

MEMBER JENKINS, dissenting in part:

I agree with my colleagues' adoption of the Administrative Law Judge's finding that Respondent violated Section 8(a)(3) and (1) of the Act by selecting employee Leight for layoff because of his activities on behalf of the Union. Contrary to my colleagues, however, I do not agree with the Administrative Law Judge that Respondent did not additionally violate Section 8(a)(3) and (1) by selecting for layoff employee activists Shaw, Caetano, Murray, and Eagles.

The pertinent facts are as follows: The alleged discriminatees were employed on Respondent's second shift. On Friday, April 20, 1979,[6] certain employees participated in a "work action" over Supervisor Tyson's denial of a request for an extended lunch period that day. Thus, despite the denial, four of the five alleged discriminatees and other employees took an extended lunch period. Later that day, these employees, along with others, left work prior to the termination of their shift in protest over certain actions taken by another supervisor, Bernard. The protestors retired to a local restaurant where they proceeded to voice complaints about management. While employee Shaw was the only alleged discriminatee not involved in this walkout, her uncontroverted testimony is that, after observing the protesting employees leave Respondent's premises, she inquired, in the presence of Supervisor Bernard, as to whether those who left were attempting to start a union. Bernard admitted that, after the protestors had left the plant, she telephoned her superior, Supervisor Tyson, to inform him of what had occurred. Tyson admitted that Bernard reported the names of the employees involved in the extended lunch break.

At the end of the second shift at 12:30 a.m., Shaw joined the other protesting employees at the restaurant and, with their assent, she telephoned the Union. Shortly thereafter, a business agent for the Union met with the employees at the restaurant and explained to them the need for obtaining signed authorization cards and the procedure for soliciting signatures for these cards. Each of the employees in attendance then signed a card. Many of these employees thereafter urged their fellow employees to support the Union and to execute authorization cards. In so doing, discriminatee Leight, on Monday, April 23, inquired of Supervisor Teich whether he would be interested in start-

[4] See, e.g., *Kings Terrace Nursing Home and Health Related Facility*, 229 NLRB 1180 (1977).

[5] We have substituted a new notice which, *inter alia*, conforms to par. 1(b) of the Administrative Law Judge's recommended Order.

[6] All dates hereinafter refer to 1979.

ing a union. Teich reported this inquiry to his superior, Tyson, who in turn related the conversation to Respondent's division manager, Kircher. Meanwhile, in late March the volume of patent work performed by Respondent pursuant to a contract with the United States Department of Commerce had been reduced because of Government budgeting constraints and efforts by Respondent to effect a reversal of the reduction had proved unsuccessful. During a meeting between Respondent and the representatives of the Department of Commerce on April 24, the latter made it clear that the volume of Respondent's patent work under the Government contract would not be increased to previous levels.

On the morning of April 25, Division Manager Kircher met with Respondent's vice president and they allegedly decided, among other things, that the Government's cutback made it necessary to lay off from 8 to 10 employees on the second shift. Respondent immediately instructed its supervisors to compile lists of those employees recommended for layoff. Later that day, Respondent hastily informed the alleged discriminatees and several other employees that they had been terminated. It is worth noting that all of the employees laid off, other than the alleged discriminatees, were *probationary* employees. As discussed below, most of the alleged discriminatees were selected for layoff although Respondent's supervisors did not recommend such action.

The Administrative Law Judge found that the selection for layoff of Leight, one of the five alleged discriminatees, was unlawful. The Administrative Law Judge based this conclusion on his findings that Respondent had direct knowledge of Leight's union activity and that the General Counsel had established that Respondent's asserted reason for selecting Leight for layoff was pretextual. The Administrative Law Judge declined to find, however, that the layoff of the other four alleged discriminatees was unlawful since, in his view, the record was devoid of evidence of union animus on Respondent's part and there was no direct evidence that any of the alleged discriminatees, other than Leight, were known by Respondent to be supporters of the Union. Contrary to the Administrative Law Judge, it is clear that, as in the case of Leight, all the necessary elements for finding violations with respect to the four other alleged discriminatees are present here. Thus, as more fully set forth below, the record clearly establishes Respondent's union animus and knowledge of the employees' activities. Further, as in the case of Leight, Respondent's asserted reasons for the layoff of the other four employees do not withstand scrutiny.

First, it is clear, as my colleagues recognize, that Respondent's union animus has been established. Thus, contrary to the Administrative Law Judge, the finding of an 8(a)(3) and (1) violation with respect to Leight establishes Respondent's union animus. The record also establishes that Respondent was well aware that its employees were dissatisfied with certain aspects of their employment. In this regard, in response to Supervisor Tyson's April 2 request, alleged discriminatee Eagles revealed that certain employees were having problems with Supervisor Bernard. Moreover, it is undisputed that Respondent had knowledge of its employees' organizational activities prior to the layoff. Thus, as noted above, the record establishes that between the union meeting on April 21 and the layoff on April 25 some of the alleged discriminatees solicited union support on Respondent's premises by urging their fellow employees to execute authorization cards. Additionally, on April 23, discriminatee Leight solicited union support from Supervisor Teich. Further, there is persuasive record evidence that Respondent had direct knowledge that the focal point of the concerted activity was its second shift which consisted of only 36 employees. Thus, as mentioned above, on the day of the walkout, Supervisor Bernard heard Shaw asking a question concerning the Union and Bernard conceded that immediately thereafter she informed her superior of the activities of the protesting employees. Additionally, on April 23, Supervisor Tyson repeatedly accused alleged discriminatee Eagles of having prompted his coworkers to engage in a walkout.

Turning now to an examination of the particular facts surrounding the layoffs of each of the remaining alleged discriminatees, the evidence compels the conclusion that Respondent violated the Act with respect to each of the four employees.

The Administrative Law Judge declined to find that Shaw's layoff was violative of the Act, since in his opinion the record contained neither evidence of Respondent's union animus nor evidence that Respondent had direct knowledge of Shaw's union activities. As noted above, however, Respondent's union animus has been established. Additionally, the Administrative Law Judge clearly erred in declining to infer, based on the small-plant doctrine, Respondent's knowledge of Shaw's union activities in discussing the Union with fellow employees and soliciting their signatures on authorization cards on Respondent's premises. Indeed, it is noteworthy that the majority has specifically refused to adopt that finding. Contrary to the Administrative Law Judge, the size of the employee complement here—86 total employees, 36 on the

second shift—is subject to the application of the doctrine.[7] Additionally, contrary to the Administrative Law Judge's suggestion, an inference of company knowledge based on the size of the employee work force may be drawn in the absence of evidence that employees revealed the alleged discriminatees' union activities to management.[8] Moreover, the record indicates that Shaw engaged in conduct in the presence of a supervisor from which Respondent almost certainly would have suspected that she was involved in the union organizational drive. Thus, as mentioned above, the Administrative Law Judge himself found that, on April 20, Shaw mentioned the Union in the presence of Supervisor Bernard.

In dismissing the complaint allegation concerning Shaw, the Administrative Law Judge accepted Respondent's contention that she was selected for layoff because of her high absenteeism. In so doing, however, he conceded that the inconsistent actions taken by Respondent concerning Shaw's attendance record created "doubt" about Respondent's asserted reason for terminating her. In this regard, the Administrative Law Judge acknowledged that Shaw had at no time during her employment with Respondent received a warning concerning her attendance and that her termination form, in fact, described her attendance as "average." Further, although Respondent contended that this "average" rating was given to Shaw because it did not want to impair her future employment opportunities, the Administrative Law Judge noted that such considerations were not extended to other employees with high absenteeism. Following the layoff these employees were rated by Respondent as "below average" on their termination forms. Under these circumstances, I find that Respondent's rating of Shaw as "average" was an accurate reflection of its opinion of her absenteeism and that her rating contradicts Respondent's contention that it regarded her attendance as a problem which warranted being selected for layoff. As further evidence that Respondent did not consider Shaw's attendance to be a problem, the record establishes that only 1 month prior to her layoff Shaw was granted an above-average wage increase based on a periodic job review. Further, Respondent's willingness to use attendance as a pretext is clear from the Administrative Law Judge's finding, which both the majority and I have adopted, that Respondent's assertion that it selected Leight for layoff was pretextual. Finally, I note that Shaw was laid off although she worked in a department which, according to Respondent, would not be immediately affected by the reduction in Respondent's patent processing. Clearly, therefore, Respondent's asserted reason for selecting Shaw for layoff is without merit.

The record reveals that Respondent had a basis for suspecting that Caetano was a union sympathizer since it was known throughout the plant that she was dating alleged discriminatee Eagles who, prior to the layoff, was repeatedly accused by Respondent of having inspired the employees to walk out in protest. Further, Caetano was among the employees who extended their lunch period on April 20 and also left work prior to the termination of their shift that day.

In concluding that Respondent's layoff of Caetano was not unlawful, the Administrative Law Judge found merit in Respondent's contention that she was designated for layoff over Latta, another employee in her department, because Caetano had been placed on a 30-day warning period for a prior rule infraction and her tardy return from lunch on April 20 and her early departure from work that same day constituted a repeat "offense" during the warning period. Unlike my colleagues, I am convinced that Respondent's asserted reason for selecting Caetano for layoff is pretextual. Thus, Respondent's position that it regarded Caetano's April 20 conduct as sufficient to constitute a repeat offense is undercut by the fact that Latta, who also returned late from lunch on April 20 and left prior to the termination of the shift that day, did so with impunity. Additionally, Respondent's contention that it viewed Caetano's April 20 conduct as a serious violation is belied both by Respondent's failure to issue any reprimand for that conduct and by the fact that the termination review prepared by Respondent for Caetano is more favorable than that prepared for Latta. I note, further, that Caetano testified that, at the time of the layoff, she was engaged primarily in the performance of work which was not affected by Respondent's patent reduction.[9] Further, Caetano was selected for layoff despite the absence of any such recommendation by her supervisor. Clearly, therefore, Respondent has offered no valid reason for its retention of Latta over Caetano.

Persuasive evidence exists that Respondent had a basis for identifying alleged discriminatee Murray as a participant in the union organizational drive.

[7] See *Montgomery County MH/MR Emergency Service*, 239 NLRB 821, 825 (1978), and *Tayko Industries Inc.*, 214 NLRB 84, 88 (1974).

[8] *C.S.C. Oil Company, a Division of Cook United, Inc., d/b/a Ontario Gasoline & Car Wash*, 228 NLRB 950 at fn. 2 (1977). Further, the small-plant doctrine is applicable here notwithstanding Shaw's testimony that she attempted to conceal her distribution of authorization cards. *Ibid.* See also *A to Z Portion Meats, Inc.*, 238 NLRB 643 (1978).

[9] Although the Administrative Law Judge preferred not to credit this testimony, it is significant that it was not controverted.

Thus, it is undisputed that, on April 20, Murray was among the protesting employees who left work prior to the termination of their shift and thereafter participated in the union meeting where she signed an authorization card. Further, while Murray, who was described by Respondent as a "good worker" with no attendance problems, was laid off, another employee in her department, Canfield, whose work was characterized by Respondent as "below average" who had a poor attendance record, and who was junior to Murray in terms of length of service, was retained. Murray testified that, prior to being informed of her layoff on April 25, she and other employees had speculated as to the employees who would be laid off. During the course of the conversation, Canfield indicated that she would volunteer for layoff. The Administrative Law Judge, however, discredited this testimony because he found that Murray's testimony on another subject had been less than forthright. Furthermore, the Administrative Law Judge omitted entirely from his analysis Murray's testimony that, after Tyson informed her that she had been selected for layoff, she inquired as to Respondent's reason for not selecting Canfield since "Canfield had volunteered" and that, in response, Tyson said Canfield "would be laid off eventually." In light of Murray's uncontroverted testimony that Canfield had indicated that she would welcome being laid off, it is significant that Respondent, despite ample opportunity to offer testimony as to whether Canfield had, in fact, volunteered for layoff prior to Murray's layoff, failed to do so. Further, the Administrative Law Judge's treatment of Murray's testimony is suspect since her testimony is clearly consistent with and corroborated by other evidence. Thus, it is undisputed that Canfield was subsequently laid off at her own request and her termination form downgraded her as "below average" in terms of quantity of work performed and attendance. I therefore find that the Administrative Law Judge's discrediting of Murray is contrary to the weight of the evidence.[10] Finally, Murray was selected for layoff, although her supervisor did not recommend such action. Accordingly, in light of the record as a whole, the Administrative Law Judge's conclusion that Respondent did not violate the Act by selecting Murray for layoff is not supported by the weight of the evidence.

It was not difficult for Respondent to identify Eagles as a union sympathizer in view of his past communications to Supervisor Tyson concerning employee discontent with one of Respondent's supervisors, his extended lunch break on April 20, and his early departure from work that same day. Thus, as mentioned above, it was uncontroverted that on April 2, at Supervisor Tyson's request, Eagles revealed that employees in his department were having "problems" with their supervisor. Thereafter, on April 23, the same day that discriminatee Leight solicited union support from a supervisor, Tyson summoned Eagles to his office and inquired as to the circumstances surrounding the walkout on the preceding Friday, April 20. Eagles denied Tyson's accusation that he had taken other employees with him when he left and told Tyson that the other employees had walked out spontaneously and that he had no control over them. The conversation then shifted to a discussion of conditions in the plant. Eagles credibly testified that he again reported to Tyson that employees in his department were dissatisfied with their supervision and reminded Tyson that, although management had assured him that arrangements would be made to resolve the problem, nothing had happened. The Administrative Law Judge also credited Eagles' testimony that Tyson repeated the accusation that Eagles had precipitated a walkout and stated that, for this reason, he had "no respect for him anymore." Eagles additionally testified that on April 25, after learning that other employees had been laid off, he went to the office where he was informed by Supervisor Tyson that his name was on the list of employees to be laid off. Eagles further testified that Manager Kircher then produced and requested that he sign his *previously* prepared termination papers.

The Administrative Law Judge conceded that the General Counsel's contention that Respondent had knowledge of Eagles' involvement with the union organizational drive was supported by Eagles' uncontradicted testimony that Tyson repeatedly accused him of having inspired a walkout.[11] The Administrative Law Judge, however, considered the dispositive issue to be whether Eagles quit or was involuntarily laid off. He credited the testimony of Kircher that, on April 25, Eagles approached him and stated, "lets [sic] get this thing over with . . . this is what I want" and that Kircher took these remarks as a request for a voluntary layoff. He further credited the testimony

[10] The Administrative Law Judge's specific credibility resolutions with respect to Murray do not appear to be based on demeanor and, as indicated above, he has ignored certain uncontradicted testimony by Murray. Furthermore, his discrediting of Murray is at odds with the reasonable inferences to be drawn from the record. In these circumstances, a *de novo* consideration of credibility is warranted. See *El Rancho Market*, 235 NLRB 468 (1978).

[11] Further, Eagles testified without contradiction that on April 23 he solicited two employees on Respondnt's parking lot and, as with Shaw, an inference of knowledge of such union activities is warranted under the small-plant doctrine.

of employee Ragg that Eagles had told him that he intended to volunteer for layoff. Accordingly, the Administrative Law Judge concluded that Eagles had, in fact, volunteered for layoff. Based on this conclusion, the Administrative Law Judge rejected the General Counsel's contention that Eagles' layoff was in retaliation for his union activities.

The weight of the evidence, including reasonable inferences drawn from the record as a whole, does not support the conclusion that Eagles volunteered for layoff. Indeed, I fail to see how my colleagues can regard Respondent's contention that it believed Eagles' remarks to be a request for a layoff as anything other than fallacious. Thus, Eagles' alleged remarks to Kircher fall far short of a request for a layoff. Additionally, the Administrative Law Judge found that Ragg's testimony was marked by "confusion." In this regard, Ragg testified that he engaged in conversations with Eagles concerning the layoffs but that he "didn't recall" the date on which Eagles said that he wanted to volunteer for a layoff. Additionally, at various times during his testimony, Ragg indicated that he "could not remember" and "wasn't sure" of certain crucial facts. The Administrative Law Judge nevertheless credited his testimony *in toto*. However, even if I were to regard this testimony as reliable, I would not find it to be probative of the issue of whether Eagles, in fact, volunteered for layoff since there is no evidence that Respondent was informed that Eagles had stated that he intended to volunteer for layoff. Further, Ragg was not present during the conversation in which Respondent alleged that Eagles volunteered for layoff. Finally, it is significant that the Administrative Law Judge labled as "specious" the explanation offered by Respondent for having presented Eagles with termination papers which were prepared *prior* to his alleged "voluntary" request for layoff. In this regard, Respondent's supervisors testified that, while employee Jackson had been selected for layoff rather than Eagles, termination papers had been prepared for Eagles as well as Jackson because Respondent had to reduce the work force by a certain number of employees that day. According to this testimony, had Jackson been absent from work on the day the layoffs occurred Jackson would have been retained and Eagles would have been laid off. In other words, if Respondent is to be believed, it planned to reward an absentee by retaining him and to penalize an employee who reported for work by laying him off. And this from an employer who claims it laid off an otherwise exemplary employee, Shaw, because of her "poor attendance record." Such an explanation is obviously contrived and clearly indicates that Respondent was attempting to hide its true motivation for selecting Eagles for layoff. Accordingly, and in light of Respondent's established union animus and its persistent badgering of Eagles concerning his role in the walkout only 2 days prior to his layoff, I am convinced that Respondent unlawfully selected him for layoff.

It is clear that the General Counsel has established the additional complaint allegations. Thus, the majority has found, and I agree, that the record establishes that Respondent harbored union animus. Additionally, the finding that Respondent had knowledge of the alleged discriminatees' union activities is clearly warranted here. Moreover, in light of the haste with which Respondent acted in selecting the alleged discriminatees for layoff, the failure of Respondent to establish its asserted reasons for selecting the alleged discriminatees therefor, and the fact that the only other employees selected by Respondent for layoff were probationary employees, I am compelled to conclude that the layoffs of all five of the alleged discriminatees in this case were motivated by antiunion considerations and were violative of Section 8(a)(3) and (1) of the Act. I dissent from my colleagues' failure to so find.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

Accordingly, we give you these assurances:

WE WILL NOT select for layoff or otherwise discriminate against you because you have engaged in activity on behalf of Teamsters Union Local 929, International Brotherhood of Teamsters, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL offer Bryant Leight immediate and full reinstatement to his former position or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and pay him for the earnings he lost by reason of our discrimination against him, with interest.

WE WILL expunge from Bryant Leight's personnel records, or other files, any reference to his April 25, 1979, layoff and notify him in writing that this has been done and that evidence of this unlawful layoff shall not be used as a basis for future discipline against him.

INTERNATIONAL COMPUTAPRINT CORP.

DECISION

STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge: This proceeding was heard before me in Philadelphia, Pennsylvania, on November 28 and 29, 1979, upon an unfair labor practice charge filed on May 1, 1979, and a complaint issued on June 25, 1979, alleging that International Computaprint Corp. (herein called Respondent) violated Section 8(a)(3) and (1) of the Act by the layoff on April 25 of employees Peggy Shaw, William Eagles, Gloria Murray, Bryant Leight, and Isabel Caetano because of their union activity. In its duly filed answer, Respondent denied that any unfair labor practices were committed. After close of the hearing, briefs were filed on behalf of the General Counsel and Respondent.

Upon the entire record in this proceeding, including consideration of the post-hearing briefs, and my observation of the witnesses while testifying and their demeanor, it is hereby found as follows:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Delaware corporation with a place of business in Fort Washington, Pennsylvania, from which it is engaged in the operation of data-base systems and photocomposition. In the course and conduct of said operations, Respondent, during the representative period, performed services valued in excess of $50,000 for various enterprises located in States other than the Commonwealth of Pennsylvania.

The complaint alleges, the answer admits, and I find that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Teamsters Union Local 929, International Brotherhood of Teamsters, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

As indicated, this proceeding is confined to allegations stemming from a layoff in Respondent's printing division. In all, nine employees were terminated, including Peggy Shaw, Gloria Murray, Isabel Caetano, Bryant Leight, and Ted Eagles on April 25, 1979.[1] It is noted that no serious challenge is registered to testimony which was substantiated in a number of significant respects by documentation to the affect that work available in said division was reduced measurably prior to the layoff and that it became apparent on April 24 that said condition would continue into the indefinite future. The claim of discrimination is premised on the General Counsel's view that the timing of the layoff and the fact that it was hastily arranged, coupled with the questionable grounds upon which the discriminatees were selected, all serve to establish that Respondent sought to eliminate those known or suspected of having manifested their support of the Union. By way of defense, Respondent observes that the record is devoid of evidence of union animus and that the General Counsel has failed to prove, except in the case of Bryant Leight, that the layoff was affected with knowledge of individual union activity. As for alleged discriminatee Ted Eagles, Respondent asserts that he volunteered for layoff. Basically, however, Respondent argues that the layoff was prompted by, timed, and affected pursuant to a formula grounded solely in legitimate business considerations.

B. *Background*

Respondent's printing division is one of several separate operating arms of the Company. At times proximate to the layoff, some 86 employees were assigned thereto, with operations conducted on a two-shift basis. Some 36 employees were assigned to the second shift under the immediate supervision of Peggy Bernard, the sole management representative regularly assigned thereto.

There was no history of bargaining for these employees and the instant union campaign originated with employees on the second shift, primarily because of their disenchantment with Supervisor Bernard. Both the initial contact and meeting with the Union took place during the early morning of April 21, after second-shift employees had gathered at the "Beef and Ale" restaurant (herein called the "Beef and Ale." Respondent admits to learning of union activity on April 23 when alleged discriminatee Leight approached admitted Supervisor Bob Teich and asked Teich if he would be interested in starting a union. Teich, on April 24, reported this conversation to Production Supervisor Bud Tyson, who in turn

[1] Unless otherwise indicated, all dates refer to 1979.

relayed the information to Dean Kircher, Respondent's division manager.

The layoff occurred on April 25. The nine selected were second-shift employees.[2] Other than the five alleged discriminatees, one had volunteered for layoff (Diane Chapman) and three others had recently been hired in March, were on trial, and according to Respondent, had not responded to training. (Len Dougherty, Paul Jensen, and William Vare.)

Of the five alleged discriminatees, it appears that with the exception of Gloria Murray who was rehired by Respondent at another division, none were recalled or offered employment subsequent to the April terminations.

C. *Concluding Findings*

1. The union activity

During the second shift on April 20, certain employees participated in "work actions," which apparently were inspired by an earlier denial by Tyson of a request by Ted Eagles that he be granted permission on April 20 to take an extended lunch hour to celebrate a birthday. Despite the denial, alleged discriminatees Eagles, Leight, Murray, and Caetano joined by Vicki Latta, Steve Gallagher, and Robert Requio, all second-shift employees, took an extended lunch period on the evening of April 20. Subsequently, during the shift, these employees and others left work early, prior to the termination of the shift.[3] Alleged discriminatee Peggy Shaw was not involved in the extended lunchbreak and did not join the walkout. She testified that after observing the employees leaving she approached others who stayed on as they were talking to Bernard, inquiring as to whether those who left were trying to start a union.[4]

At the close of the shift at 12:30 a.m., Shaw went to the "Beef and Ale." After learning of employee discontent, she, with the assent of the others, contacted Augustine Vandetti, a business agent for the Union who shortly thereafter appeared at the "Beef and Ale." During his meeting with employees, Vandetti explained the need for obtaining signed authorization cards, and the procedure for soliciting and obtaining authorization cards, and the procedure for soliciting and obtaining execution of these cards. At his request, all in attendance signed cards.

The layoff of April 25 did not reach several second-shift employees present at that meeting, who also failed both to return from the lunchbreak on a timely basis and to complete the balance of their shift on the evening of April 20. Nonetheless, a strong effort was made to isolate the discriminatees, as especially vulnerable to reprisal, through testimony that they alone volunteered to serve on an employee organization committee. The testimony offered in support of this element of the General Counsel's theory was lacking in consistency. Thus, Vandetti testified that in the course of the April 21 meeting he "got five people who volunteered to be on an organizing committee"; namely, Shaw, Leight, Eagles, Caetano, and Murray. According to Vandetti, all were given blank cards and told to obtain signatures from other employees at the plant. Aspects of his testimony were highly suspect and somewhat contradictory. The purpose in forming this group and the role of its members as described by Vandetti was twofold: to obtain signatures to organization cards and to inform employees of a meeting to be held during the following week.[5] Nonetheless, Vandetti conceded that employees other than those designated for the organization committee took extra cards at the meeting,[6] and that, after their layoff, at the second union meeting, the five discriminatees were formally elected to serve on the organizing committee, even though none at the time enjoyed payroll status. The confusion was compounded by testimony of Leight and Caetano, both of whom acknowledged that they obtained no blank cards at the April 21 meeting.

Another item of curiosity originates with an acknowledgement by Eagles that in his sworn prehearing affidavit he named only four employees as having volunteered. Caetano was omitted. At the time Caetano was Eagles' girlfriend, and this discrepancy did not strike me as attributable to an inadvertent oversight in reporting facts truthfully.

Although I believe that a meeting took place at the "Beef and Ale" in the early morning hours of April 21, that Shaw made the initial contact with the Union, and that those in attendance signed union authorization cards at that time, the testimony concerning the "volunteers" was viewed as unworthy of trust. The faulty and unbelievable testimony offered in regard to the latter related to a matter of considerable import and may not be lightly dismissed as a byproduct of confusion or hazy perspective. My disbelief of this testimony was sufficiently deep to cast a cloud upon much of the testimony of the General Counsel's witnesses. It was regarded as a contrived effort to enhance suspicion with respect to the treatment accorded the five named discriminatees and to diminish the import of Respondent's failure to include in the layoff certain others whose union activity was no less than certain of the discriminatees.[7]

---

[2] See G.C. Exh. 6.

[3] Gallagher, also a second-shift employee, did not return from lunch that evening. Leight testified that he left work early for no specific reason, but, upon observing that others were leaving, told Supervisor Bernard that he was not feeling well. Eagles testified that he left because he had taken ill after lunch, an explanation that was echoed by Caetano and Murray as the reason for their respective early departures. Upon leaving work all four went to the "Beef and Ale."

[4] The walkout seemed related to employee disdain for actions by Supervisor Bernard. The only other evidence of a specific grievance was that imputed to employee Gallagher, who was apparently disgruntled as to his failure to receive increases on time.

[5] Murray testified that the so-called Committee was formed after Vandetti asked for volunteers "to hold cards," for signature of others, the only function delegated to the volunteers.

[6] For example, Eagles named Gallagher as having obtained extra cards, but no one named Gallagher as having volunteered to serve on any such committee.

[7] Leight testified that Tommy Thompson did not sign a card at the April 21 meeting and that Requio left prior to the arrival of Vandetti. Eagles testified that Jackson and Requio left the meeting before he did and were not present when union literature was distributed. Murray testified that she was sure that Requio signed a card at the April 21 meeting. There was no testimony that Thompson had left prior to the distribution of cards by Vandetti. And Vandetti, who impressed me as not inexperienced in such matters, testified that "all" present signed authorization cards at the April 21 meeting. It is assumed that Vandetti, rather than the others, would have superior knowledge and his observation that all

Continued

In the interim between the April 21 meeting and the April 25 layoff, certain of the discriminatees discussed the Union with their fellow employees urging them to support the Union and to execute authorization cards. Because of Leight's action in soliciting union support from Supervisor Teich, Respondent had admittedly received information as to the existence of such activity prior to the layoff. With the exception of Leight, however, there is no direct evidence that Respondent was aware that a union meeting was held at the "Beef and Ale" or of the identity of either those who attended or who engaged in subsequent activity in furtherance of the organization effort.

2. The layoff

Work available to Respondent's printing division was under threat well prior to the advent of the Union. Revenues generated by that division as well as the work of employees assigned thereto depended critically upon services provided for the Bell Telephone System and the United States Patent Office, Department of Commerce. With respect to the latter, as of September 1978, a contract was negotiated throught the United States Government Printing Office (GPO) on behalf of the Department of Commerce, whereby Respondent could expect to perform the original printing of 58,000 patents per year or an average of 1,286 units per week for the next 12 months. Approximately 95 percent of the work performed by Respondent under that contract was completed in the printing division. The volume of work generated thereby constituted 80 percent of the work performed in the printing division.

In 1979, budgeting constraints on the Department of Commerce produced a reduction in printing division intake. By letter dated March 20, the Company was formally advised that volumes of work under the above contract would be reduced. By virtue thereof a "contracting officer" of the United States Department of Commerce, informed Respondent, *inter alia*, that its weekly unit requirements for delivery between May 29 and November 20, would be cut by some 45 percent to a weekly average of 650 units.[8] Respondent reacted quickly and by letter dated March 23, 1979, protested to the United States Government Printing Office that the position taken by the Department of Commerce was in violation of the annual agreement. In that letter,[9] the impact upon Respondent (ICC) of the planned reductions was defined as follows:

> The consequences of this abrupt change for ICC are staggering and far reaching. Since drawings are received 42 days before issue day our work force reduction must begin the week of March 26, 1979. ICC would have to lay off about half of its trained staff which it has taken so long to build. Once these reductions begin, other trained personnel will "bail out" because of the unexpected behavior of the contract. As we know from past experience, ICC will develop a reputation in the labor market which will hinder our present and future hiring.

Pursuant to the foregoing, effective March 29, 1979, orders actually submitted to Respondent were at the reduced 650 weekly level. Parenthetically, it is noted at this juncture that the various tasks performed on these units took a period of 8 weeks or 42 days from date of delivery to date of shipment. According to my calculations, printing at the reduced 650 unit level would bring about—effective the week commencing March 29—an immediate reduction in the work available to the printing division of 4.5 percent weekly. On a cumulative basis, upon expiration of the initial 8-week cycle, this forebode an ultimate reduction upon the demands upon the work force which would continue at a constant 36 percent weekly.

Following the March 29 letter Respondent's representatives engaged in various efforts to bring about a reversal of the Government's position. Although the intake of patent work continued at the reduced level, there were signs that the Government would recede and return to pre-March 29 volumes. However, on April 24 Respondent's vice presidents, Dariano and Klosterman, met in Washington, D.C., with representatives of the Department of Commerce. In the course thereof, a final decision was made by the Governmental representatives to increase the weekly patent volume from 650 to 750 only. By letter dated April 26, Respondent was informed of the revision and that delivery of units at the 750 level would commence on July 3.[10]

Following the meeting with government officials on April 24, of that same evening, Klosterman telephoned Dean Kircher advising that a layoff would be necessary. They agreed to meet the next morning to discuss the layoff.[11] On the morning of April 25 Klosterman and Kircher discussed generally the means by which the layoff would be implemented. It was decided that since volume would be reduced by some 43 percent, a 30- to 35-percent reduction of staff would be required. A determination was made to immediately reduce staff by from 8 to 10 employees. The layoff was to be concentrated on the second shift,[12] which in relation to the first, was smaller, subject to limited supervision on a regular basis by a single individual, and at least in terms of unit costs, less productive since second-shift employees were paid on parity with first-shift employees while working a half hour less each day.

Kircher then met with Tyson wherein it was decided to cut back one production control employee, one platemaking employee, and one pressman, with the balance to be drawn from the distribution and collation department.

signed seemed likely to have been representative of fact. While it is possible, that Requio and Jackson may have left the meeting before authorization cards were distributed, my strong disbelief of critical aspects of testimony afforded by the General Counsel's witnesses leads me to reject the testimony of Leight and Eagles in this respect as well.

[8] See Resp. Exh. 8 (Program 306-S). The letter in question also refers to a reduction in data base work performed outside the printing division.

[9] See Resp. Exh. 9.

[10] See Resp. Exh. 17.

[11] See credible testimony of Klosterman and Kircher.

[12] In September 1977, through competitive bidding, Respondemt lost the annual contract for original printing of patents to a competitor. A layoff resulted, which, according to the credited testimony, was at that time concentrated on the evening shhfts. The printing division sustained a reduction from 86 to some 16 employees at that time.

As it was Kircher's intention to retain the best employees, Tyson was instructed to consult with the first-shift supervisors to obtain their recommendations as to who should be included in the layoff. After the lists were submitted, Tyson met with Kircher and they made the selections.

The layoff was effected on the afternoon of April 25. Thus, following arrival of the second shift, employees on a departmental basis were assembled and informed that a layoff would be necessary because of the reduced volume of patent work. Subsequently, those to be terminated were called to Kircher's office on an individual basis and informed of their terminations.

3. Concluding findings with respect to the allegations of discrimination

a. *Preliminary statement*

There can be no serious quarrel on this record that a reduction in force in the printing department was probable at some point following the reduction in patent volumes. The General Counsel argues that the decision to take such action on April 25, when considered in the light of a number of factors, raises serious question as to the genuine nature of the considerations on which Respondent acted in selecting the five discriminatees.

The only explanation for the immediacy with which Respondent acted appears in parole testimony that Kircher on April 26 was leaving for Detroit on a 5-day trip, and that he felt it his responsibility to manage personally the initial layoff to its conclusion, rather than place that burden upon a subordinate.

The General Counsel's theory proceeds from the fact that union activity centered on the second shift, which coincidentally was the focal point of the job cutback. Furthermore, while Respondent professed to a desire to retain the best employees, the determination as to who would be included was made by Kircher and Tyson with input from other first-shift supervisors. Their determination was finalized prior to the arrival of the second-shift supervisor Bernard. Thus, Bernard was unable to contribute in the formative stages of this determination involving employees with which she would be the most familiar.[13]

The General Counsel also challenges Respondent's wisdom in laying off employees in departments which had not as of April 25 sustained any reduction in work. Thus half of the employees selected, namely, Leight, Shaw, Vare, Dougherty, and Jensen, were in departments at the tail end of the patent processing. The General Counsel observes, with accuracy, that, under Respondent's own explanation of the impact of the Government's action, departments in which the latter worked would remain at full production levels at least until after Kircher returned from his trip to Detroit. On this latter date, according to the General Counsel, the selections could be made on a considered basis with full input from the second-shift supervisor. It is argued that in the circumstances the haste with which Respondent acted was indicative of an unlawful intent to thwart at the outset any expansion in the employee organizational movement.

The foregoing lends suspicion to Respondent's action. At the same time, however, business judgment is not always exercised within a framework of equity. In any event, the fact that the cutback was limited to second-shift personnel was not lacking in precedent, but was consistent with the approach adopted by the Company during the only prior layoff in its history.[14] Furthermore, the General Counsel's claim concerning the haste with which the layoff was implemented is mitigated somewhat by the fact that as of April 25, for a period of almost a month, Respondent was engaged in printing division operations at manpower levels unjustified by diminished volumes which by then had reached about 13.5 percent. There is no question that the layoff was justified, and the issue of whether Respondent acted on proscribed grounds in selecting the five alleged discriminatees, rather than others, requires an assessment of any discrepancies in the defense in the light of the affirmative burden to be carried by the General Counsel in such a case. Here, the layoff reached several employees not named in the complaint and several others were retained though engaged in union activity identical to that of alleged discriminatees. Further, evidence of union animus is lacking and, with the exception of Bryant Leight, it does not appear directly that any of the discriminatees were known by Respondent to be supporters of the Union. While these omissions are not necessarily fatal to the complaint, the circumstances affecting each of the discriminatees differ, and, in the final analysis, the critical issues turn on each of their separate cases.

b. *The individual cases*

1. The collation department

Peggy Shaw and Bryant Leight were the two employees selected from the second-shift collation department. Respondent claims that Shaw was selected because of her high absenteeism, and Leight was selected because of his poor record of productivity as well as his absenteeism.

Shaw was hired in August 1978. Although Shaw was the employee who initially contacted the Union on April 21, she was not among the group that returned late from lunch on April 20, nor did she leave work that day prior to the end of her shift. She signed an authorization card at the April 21 union meeting. Later that Saturday evening while working overtime, Shaw discussed the Union with fellow employees on the second shift and solicited signatures to authorization cards from among them. On Monday, April 23, Shaw again distributed authorization cards.

Consistent with Respondent's assigned ground for her selection, Shaw since her hire on August 8, 1978, had

[13] An attempt to diminish this odd circumstance was apparent in testimony on the part of Kircher and Tyson. Kircher related that the layoff had to take place immediately and prior to his scheduled departure for Detroit. Tyson testified to the effect that the recommendations from first-shift supervisors were sufficient in that the second-shift employees had been trained on the first shift and that, in addition, some overlapping existed between the shifts.

[14] See uncontradicted testimony of David Klosterman, Respondent's vice president of finance and administration, as corroborated by Kircher.

119 hours of accrued absenteeism. It does not appear that this adverse attendance record was equaled or exceeded by any other enployee in the collation department.[15] Favoring the General Counsel is the fact that the personnel action form completed upon the layoff of Shaw describes her attendance as "average,"[16] a factor which contrasts starkly with the action taken by Tyson upon subsequent termination of employees Beth Canfield and Vicky Latta, whose forms were marked "below average" in the area in which their attendance was rated. Also puzzling is the fact that on March 19 a periodic review on Shaw was prepared, signifying that she was granted a 6-percent increase based thereon. Tyson testified that the average raise granted during this timeframe averaged "approximately 5 percent." Thus, based on documentary evidence, Shaw's adverse attendance history as recently as a month earlier, did not impair her opportunity for an above-average wage increase.

Despite these discrepancies, I am not persuaded that the General Counsel has met his burden of proof in this instance. As heretofore found, the layoff itself was based on legitimate economic considerations and occurred the day after Respondent learned that a reduction in patent work had been finalized. Direct evidence that Respondent was aware of Shaw's role in the union effort[17] was lacking. Unlike other named discriminatees, Shaw engaged in no activity in the presence of Respondent's agents from which it might be inferred that Respondent assumed or suspected that she might have been involved in the organization effort. The inconsistent actions taken by Respondent in connection with the attendance record of Shaw[18] create an element of doubt. However, absent elements of union animus and knowledge coupled with the fact that Shaw, insofar as this record discloses, may have compiled the worst absentee record in the division, I am convinced that her selection was based on that ground alone. I find that the General Counsel has not met his burden of proving that her termination was based on considerations proscribed by Section 8(a)(3) and (1) of the Act.

Leight was hired on August 4, 1978. He was among the second-shift employees that took an extended lunchbreak on April 20 and also left work prior to the expiration of his shift that evening. He was the only individual selected for layoff shown on this record to have been known by Respondent to be a union advocate.

Respondent claims that Leight was selected by reason of his poor attendance and productivity. Although a borderline issue is presented, I agree with the General Counsel that the reason assigned for the layoff of Leight was pretextual. The involvement of Leight in the Union was known by Tyson and Kircher at the time of his selection. Also, unlike the other alleged discriminatees, in this instance the General Counsel has substantiated disparate treatment. Thus, Raymond McKeever was also assigned to the collation department on the second shift. He was hired on July 25, 1978. Since that date he accumulated absences of 114 hours. Leight on the other hand was absent 95 hours during his employment.[19] I did not believe the testimony of Tyson that he selected Leight over McKeever because McKeever was black and since a decision had already been made to terminate another Black, Murray, to eliminate McKeever would prejudice Respondent's equal employment opportunity profile. Tyson's testimony struck as afterthought. Tyson was obviously less than conversant with minority employment requirements. The selections of those to be laid off were made simultaneously and the question arises as to why McKeever was given consideration as a minority employee when Murray was not.

With respect to the poor production issue, Tyson conceded that he did not spend "an exceptional amount" of time personally observing Leight in the performance of his duties. He denied consulting any production records in selecting Leight for layoff. He claimed, however, that this charge was made against Leight on the basis of Tyson's recollection of the content of his 6-month review which was completed more than a month earlier on March 15. At that time, Leight was afforded a less-than-average raise of just 3 percent.[20] Although that document contains a notation that Leight's production was below standard, Tyson was not in a position to evaluate Leight in terms of his improvement or the lack thereof during the period following his evaluation. Moreover, Tyson recommended the layoff of Leight, despite the absence of any such recommendation from Supervisor Nichols, who preferred four other employees from the second-shift collation department for termination.[21] Considering Respondent's retention of McKeever, as well as its failure to consult with Supervisor Bernard, though including Leight in a layoff upon a ground which would be peculiarly within her knowledge, prior to finalizing the decision with respect to Leight, I find that Leight was included by reason of his known support of the Union and in violation of Section 8(a)(3) and (1).

2. Platemaking

Isabel Caetano was hired on September 18, 1978. She was one of three regular full-time employees assigned to

[15] Shaw credibly testified that she had never before been warned concerning her attendance or absenteeism. In my opinion this consideration favors the General Counsel to a lesser degree where discriminatory selection for layoff is in issue than would be true in the case of a discharge based on that ground.

[16] See G.C. Exh. 21(a).

[17] In the circumstances, I am unwilling to infer that such knowledge existed in view of the size of Respondent's facility. Cf. *Tom's Ford, Incorporated*, 233 NLRB 23, 27 (1977). At times material to this proceeding, the printing division was manned by 86 employees, 36 of whom were on the second shift. It does not appear that representatives of management interrogated or otherwise initiated conversations concerning the union effort with any employees during the period between the inception of union activity and the April 25 layoff.

[18] Tyson testified that, in completing the termination reports on those selected for layoff on April 21, he completed their ratings so as to avoid stating anything detrimental that might impair their future employment opportunities. The same considerations were not extended to others, who, following the layoff, failed to perform according to expectations. Nonetheless, considering his testimony against other credible facts I was inclined to believe Tyson in this respect.

[19] Supervisor Nichols, who held responsibility for the collation department, submitted a list of second-shift employees indicating his preference for layoff. Leight's name did not appear on that list.

[20] Employee McKeever's most recent evaluation also reflected a mere 3-percent raise.

[21] See G.C. Exh. 1(b).

the platemaking department on the second shift. Respondent claims that she was designated for layoff over another employee in that department, Vicky Latta,[22] because Caetano had received a formal warning on March 30. Thus, on March 30, 1979, Caetano received a notice of reprimand for "leaving work [and] not notifying supervisor." In consequence Caetano was placed on warning for a period of 30 days.[23] On April 20, Caetano was among the employees who extended their lunchbreak without authorization, and also left work, prior to the conclusion of their shift. Respondent observes that Caetano's conduct on April 20 involved a repeat offense, occurring during the established 30-day warning period. Apart from the warning of March 20, it appears that Vicky Latta and Caetano were somewhat similarly situated in terms of the events of April 20. Latta, like Caetano and the others, was late in returning for work, and also left early that day. Latta was also identified by the General Counsel's witnesses as having attended the union meeting at the "Beef and Ale" that night.[24] The General Counsel seeks to bridge this gap by claiming that Respondent had a basis for suspecting Caetano was a union sympathizer by virtue of her relationship with Ted Eagles. It is argued that because Eagles, prior to the layoff, discussed with management his own dissatisfaction and that of other employees Eagles would necessarily have been associated with the organization effort. From this it is asserted that because Eagles was dating Caetano Respondent would assume that she too was involved. In my opinion this pyramiding of inferences furnishes too slender a reed to form the predicate for a finding of discriminatory selection. Persuasive evidence of disparate treatment is lacking, and in the circumstances, on the credible evidence, and considering Caetano's indisputable violation of her warning, the record does not warrant a finding that Respondent violated Section 8(a)(3) and (1) in designating Caetano for layoff.

3. Production control

Gloria Murray was hired on August 8, 1978. Of the five named discriminatees, Murray was the only one employed by the Respondent as of the date of the hearing.[25] Murray, on April 20, returned from lunch late and left work early, repairing to the "Beef and Ale" where she signed an authorization card during the meeting with Vandetti.

Respondent contends that Murray was selected for layoff since she was the only employee in her department assigned to the second shift. At the time, Murray served in a position she had occupied only 6 weeks. Her training in that position had not been completed. Her department on the second shift was the first to receive a low volume of work,[26] enabling day-shift personnel to adequately handle the work of the second shift.

In contending that Murray was discriminatorily selected, counsel for the General Counsel relies on the fact that she was a good employee,[27] who, though black, was laid off in the face of Respondent's indication that minorities were to be given consideration in the selection process. In addition, the General Counsel points to Beth Canfield, a first-shift employee assigned to the production control department, who, though junior to Murray in terms of length of service, was retained. In finding that the General Counsel has not established anything untoward in Respondent's election to retain Canfield over Murray, it is noted that Tyson credibly testified that Murray was afforded this position on the second shift at her request based on personal problems which required her to work those hours.[28]

Having concluded that Respondent's decision to prefer second-shift personnel in effecting the layoff was based on legitimate business considerations, and having credited Respondent's testimony that Murray's work had readily been absorbed by the first shift, considering the General Counsel's failure to establish through credible evidence that the layoff of Murray was based on disparate considerations,[29] I find that Respondent did not violate Section 8(a)(3) and (1) by laying off Murray on April 25.

4. The printing department

Respondent's formula for effecting the layoff called for elimination of a single employee on the second shift from the printing department. According to Respondent, this requirement was filled when William T. Eagles resigned.

Eagles was a group leader in the press area on the second shift and a relatively long-term employee, having been initially hired in August 1977.

On April 2, Eagles was formally reprimanded and given a 30-day warning for having left work without notifying his supervisor.[30] Upon issuance of that warning

[22] The only other employees in the platemaking department on the second shift were Kenneth Kerner, a long-term employee and the group leader, and a "casual" or "as needed" employee, Donna Bauer.

[23] See Resp. Exh. 6.

[24] Caetano, like essentially all the employee witnesses offered on behalf of the complaint, impressed me as untrustworthy. I discredit her testimony that at the time of the layoff and during periods prior thereto she was not engaged primarily in the performance of the type patent work involved in the governmental cutback.

[25] Murray applied for a job after seeing a newspaper advertisement, and in consequence was offered employment, which she accepted, in another division of the Company.

[26] Based on the testimony of Tyson. Murray confirmed that, when she reported for work at 4:30 on April 25, the work that she usually performed was unavailable.

[27] See G.C. Exh. 19(a).

[28] Murray's apparent denial in this respect was less than forthright. If not contradictory, it was confused and hedged to the point of persuading as to the accuracy of Tyson's claim that Murray prevailed upon the Company to obtain the exclusive second-shift assignment only a few months before the layoff. My mistrust of Murray also leads to a rejection of her testimony that on April 25 she had a conversation with employees concerning their speculation as to who would be laid off, and in the course thereof Canfield indicated that she would volunteer for layoff.

[29] I have taken account of the fact that Canfield subsequently volunteered for layoff and that a termination record dated May 11, 1975, downgraded her as "below average" in terms of the quantity of work performed and attendance. However, the rating of Canfield, apparent from G.C. Exh. 21, might well have been attributable to a fall off in Canfield's performance during a period after the layoff, as Respondent's testimony indicates. Furthermore, that document shows that Canfield occupied the position of "paste-up artist" while the position held by Murray at the time of her layoff was described on G.C. Exh. 19(b) as "production control." Accordingly, I am unwilling to accept the argument of counsel for the General Counsel that because both earned the same rate they, perforce, had to have occupied the same job. From the record this does not appear to have been the case.

[30] See G.C. Exh. 16.

Tyson inquired of Eagles as to why he had left work early, and Eagles indicated that press and camera personnel were having problems with the second-shift supervisor, Peggy Bernard. Also prior to the layoff, Eagles requested permission of Tyson to take an extended lunch period on April 20 to celebrate a birthday. Tyson denied the request, but Eagles, with others, nonetheless did not return from lunch on time that evening. Eagles claimed that he left work prior to the expiration of the shift that evening because he was ill, but like the others he too went to the "Beef and Ale."[31]

Eagles remained at the "Beef and Ale" through the appearance of Vandetti and the discussion of union matters, and signed a union card. He claimed to have been among the last to leave.

Eagles testified that on Monday, April 23, Tyson called him to the office and inquired as to Eagles' behavior on Friday evening. Eagles explained that he left early because he was not feeling well whereupon Tyson inquired as to whether it was true that Eagles had taken others with him when he left. This was denied by Eagles, who stated that the others walked out spontaneously and that he had no control over them. The conversation then shifted to a discussion of conditions in the shop. Eagles reported again to Tyson that employees in the press department were dissatisfied with Peggy Bernard and reminded Tyson that, though, Eagles had been assured that arrangements would be made to resolve the problem, nothing had happened. Tyson persisted in the accusation that Eagles precipitated a walkout on April 20 and told him that for this reason he had "no respect for him anymore."[32] There is no indication that the Union was mentioned in that conversation.[33]

The General Counsel contends that Respondent, having knowledge prior to April 25 that union activity was in progress, would naturally assume that Eagles was a part of that effort in view of his past communications to Tyson of employee discontent, and his extended lunchbreak and his early departure from work on April 20. The inference sought by the General Counsel in this regard is enforced somewhat by Eagles' uncontradicted testimony that Tyson repeatedly accused Eagles of having inspired a walk out on April 20.

Nonetheless, the dispositive issue is whether Eagles quit or was involuntarily laid off. Thus, following notification of employees that a layoff would be required, Respondent, also on the evening of April 25, individually summoned those selected to management offices where they were informed of their termination. In this process, Caetano, Eagles' girlfriend, was notified of her layoff prior to any adverse action taken against Eagles.

Eagles testified that after the group meeting in which employees were told of the layoff, generally names were being called over the loudspeaker. Caetano, Leight, and Shaw had been summoned, and were leaving the premises. Eagles claimed to be curious as to his own plight, and therefore went to the office, whereupon he confronted Kircher. Eagles claimed that he asked Kircher if his name was on the list because if he was he would like to "take a trip and go down to Atlantic City." Eagles further testifed that Kircher claimed to have been unaware, and referred Eagles to Tyson. Later, according to Eagles, Tyson entered the office, whereupon Kircher asked Tyson if Eagles was on the list. Tyson shook his head and said, "Yes." Kircher then opened his drawer, and gave Eagles his already prepared termination papers, requesting Eagles to sign.

On the other hand, Kircher and Tyson testified that Dan Jackson had been designated for layoff from the press department. Both claimed that Jackson was not laid off because Eagles volunteered. In this connection it is noted that an employee in the press department, Francis G. Ragg, testified that Eagles, who worked adjacent to him, questioned him twice on April 25 as to who would be laid off. In the second conversation, Eagles is alleged to have said, "Well, I'm going in and asking for a voluntary layoff."[34] Consistent therewith Kircher, with corroboration from Tyson, testified that Eagles approached him that evening, stating; "[l]et's get this thing over with. . . ." Kircher asked Eagles if he was sure, and Eagles indicated he was and that "this is what I want." These remarks by Eagles were taken as a request for voluntary layoff. Eagles was then presented, and apparently signed, termination forms that had been previously prepared.[35]

Crediting Respondent's testimony, I find that Eagles volunteered for layoff and on that limited basis shall dismiss the 8(a)(3) and (1) allegations in his case.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily selecting Bryant Leight for

[31] Eagles explained that employee Steve Gallagher had not returned from lunch that day and that he elected, though not feeling well, to go by the "Beef and Ale" to see if Gallagher was still there and what his problem was.

[32] Tyson testified that Caetano and Eagles were written up as a result of their conduct on April 20 in this regard but Respondent was unable to produce corroborative documentation. I find that Tyson was mistaken in this regard.

[33] In addition to his attendance at the union meeting, and his expressions to Tyson of discontent with Bernard, Eagles claimed to have distributed authorization cards on the morning of April 25 to employees Requio and Dan Jackson. I have considerable reservation as to the truthfulness of this assertion. As heretofore indicated, both Requio and Jackson were present at the April 20 meeting. Although it is possible that both could have left prior to Vandetti's distribution of authorization cards, I am not convinced that this was the case. Murray testified that she was certain that Requio had signed a card at the meeting.

[34] Ragg was obviously confused as to the timing of the conversations in relation to the layoff, but said discrepancy when his overall testimony is considered was not regarded as critical.

[35] Kircher testified that, though Jackson was selected for layoff, termination papers had been prepared on Eagles, as well, because Kircher had been given orders to reduce the work force by a certain number of jobs that day. Kircher claimed that, had Jackson been absent from work on April 25, he would have been retained, and Eagles would have been eliminated. He testified that this measure was also taken in the case of Vicky Latta who would have been laid off had Isabel Caetano been absent that day. Although this procedure seemed a bit specious, on balance I preferred the testimony of Kircher and Tyson, with support from Ragg, that Eagles did in fact quit.

layoff on April 25, 1979, because he engaged in activity on behalf of the Union.

4. The aforesaid unfair labor practice is an unfair labor practice having an effect upon commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, it shall be recommended that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent violated the Act by discriminatorily selecting Bryant Leight for layoff, it shall be recommended that Respondent offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to that which he normally would have earned from April 25, 1979, to the date of a bona fide offer of reinstatement, less net interim earnings during such period. Backpay shall be computed on a quarterly basis as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in accordance with *Florida Steel Corporation*, 231 NLRB 651 (1977).[36]

Upon the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[37]

The Respondent, International Computaprint Corp., Fort Washington, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Selecting for layoff or otherwise discriminating against employees in regard to their hire, tenure, or other terms and conditions of employment in order to discourage them from engaging in union activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Offer Bryant Leight immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed, and make him whole for any loss of earnings he may have suffered by reason of the unlawful discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its place of business in Fort Washington, Pennsylvania, copies of the attached notice marked "Appendix."[38] Copies of said notice, on forms provided by the Regional Director for Region 4, after being duly signed by Respondent's representative, shall be posted immediately upon receipt thereof and be maintained by it for 60 days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, covered, or defaced, by any other material.

(d) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that, except as herein specifically found, the allegations of the complaint are hereby dismissed.

[36] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[37] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[38] In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant To a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."